

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, DC 20554

In re Applications of	)	MM Docket No. 99-153
	)	
READING BROADCASTING, INC.	)	File No. BRCT-940407KF
	)	
For Renewal of License of	)	
Station WTVE(TV), Channel 51	)	
Reading, Pennsylvania	)	
	)	
and	)	
	)	
ADAMS COMMUNICATIONS	)	File No. BPCT-940630KG
CORPORATION	)	
	)	
For Construction Permit	)	

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COMMUNICATIONS COMMISSION  
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To: Administrative Law Judge Richard L. Sippel

**OPPOSITION TO**  
**ADAMS' REQUEST FOR PERMISSION TO FILE APPEAL**

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September 27, 1999

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## SUMMARY

Adams in making its *Request*, has failed to show that its appeal presents, as required under the Commission's Rules, both a new or novel question of law or policy and an error in the Presiding Officer's ruling that would necessitate remand should a review be postponed pending the filing of exceptions.

A review of Adams' arguments reveals that what Adams is really challenging is the proper inferences which the Presiding Officer may draw from the facts presented. However, a dispute over the proper inferences to be drawn from agreed-upon facts does not raise controverted factual issues that are substantial and material so as to require a hearing. It is well-settled that the "inferences to be drawn from facts already known and the legal conclusions to be derived from those facts" may be made by the Presiding Officer without an evidentiary hearing.

Adams also makes the unsupportable claim that the Commission's ten-year limitation on adding character issues is not applicable to this proceeding. However, as the Presiding Officer correctly concluded in the *MO&O*, "the Commission applies a time limitation on adding character issues based on ten-year old information that is within the Commission's control and that should have been discovered, even where the alleged misconduct indicates a 'flagrant disregard of the Commission's regulations and policies.'"

Even though Adams has styled its document "Request for Permission to File Appeal," the document is, in essence, a petition for reconsideration of the Presiding Officer's *MO&O*. As such, its *Request* should be dismissed.

## TABLE OF CONTENTS

<u>Summary</u> .....	ii
<u>Background</u> .....	1
<u>Standard for Appealing Interlocutory Rulings</u> .....	2
I. <u>Adams' Disputes With The Presiding Officer's Decision Regarding The First Requested Issue Relate To The Proper Inferences To Be Drawn From Facts On The Record, And Therefore, Are Not Substantial</u> .....	3
II. <u>The Adverse Findings Adams Relies On Are Too Remote For Consideration With Reading's Renewal Application</u> .....	10
III. <u>Contrary to Adams' Assertion, the Presiding Officer Did Not Ignore The Amendment To An Application To Acquire Station KCBI</u> .....	12
IV. <u>Even Though The Litigated Adverse Findings Against Micheal Parker Are Retained For Possible Future Use, The Commission's Ten-Year Limitation For Adding Character Issues Renders Those Findings Irrelevant In This Proceeding</u> .....	13
V. <u>The Standard For Showing Misrepresentation/Lack Of Candor Is Intent To Deceive, Not Insufficiency</u> .....	14
VI. <u>Petitions Requesting Reconsideration Of Non-Final Interlocutory Rulings Cannot Be Entertained</u> .....	16

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To: Administrative Law Judge Richard L. Sippel

**OPPOSITION TO**  
**ADAMS' REQUEST FOR PERMISSION TO FILE APPEAL**

1. Pursuant to the Presiding Officer's *Order*, FCC 99M-53 (released September 20, 1999), Reading Broadcasting, Inc. ("Reading"), by its attorneys, hereby submits its *Opposition* to Adams Communications Corporation's ("Adams") *Request for Permission to File Appeal* ("*Request*") filed on September 13, 1999.

2. Background. On July 15, 1999, Adams filed a Motion to Enlarge Issues ("*Motion*") in which it sought to add two issues to this proceeding against Reading: (1) to determine whether Reading, in light of the previously adjudicated misconduct of Micheal Parker, Reading's president, director and substantial shareholder, is qualified to remain a Commission license; and (2) to determine

whether Micheal Parker has engaged in a pattern of misrepresentation and/or lack of candor in failing to fully advise the Commission of the actual nature and scope of such previously adjudicated misconduct. The Presiding Officer issued his *Memorandum Opinion and Order*, FCC 99M-49 (released September 3, 1999) (“*MO&O*”) denying Adams’ *Motion*.

3.     Standard for Appealing Interlocutory Rulings. With the exception of rulings that are appealable as a matter of right under Section 1.301(a) of the Commission’s Rules, appeals from the rulings of presiding officers are appealable only if the presiding officer grants leave to file the appeal and the presiding officer certifies that the appeal “presents a new or novel question of law or policy and the ruling is such that error would be likely to require remand should the appeal be deferred and raised as an exception.” See Section 1.301(b);<sup>1</sup> See also *A.S.D. Answer Service Inc.*, 56 RR 2d 1518 at ¶5 (1984).

4.     As explained below, Adams, in making its *Request*, has failed to show that its appeal presents either a new or novel question of law or policy or that there is an error in the ruling that would necessitate a remand should review be postponed pending the filing of exceptions. Therefore, the Presiding Officer must deny Adams’ leave to appeal.

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<sup>1</sup>     47 C.F.R. § 1.301(b).

I. Adams' Disputes With The Presiding Officer's Decision Regarding the First Requested Issue Relate To The Proper Inferences To Be Drawn From Facts On The Record, And Therefore, Are Not Substantial.

5. With regard to the first requested issue, Adams first argues that the Presiding Officer “relied on unsupported speculation to justify an action which was inconsistent with a decision of the full Commission.” *Request* at ¶4. The decision to which Adams refers is the *By Direction Letter*, dated January 30, 1997, *Two If By Sea Broadcasting Corporation*, 12 FCC Rcd 2254, 2257 (1997), wherein the Commission determined that “[s]erious character questions remain regarding the assignee, Parker/TIBS.” According to Adams, because Micheal Parker is a dominant principal in Reading, then “the ‘serious questions’ already identified by the full Commission [in the *By Direction Letter*] must be considered here.” *Request* at ¶4. Adams also argues that the Mass Media Bureau (the “Bureau”), in designating Reading’s license renewal for hearing, lacked authority to “overrule” this so-called mandate. *Request* at ¶5.

6. In the *MO&O*, the Presiding Officer concluded, in part, that the serious findings that had been made against Micheal Parker “were not considered by the Bureau to be sufficiently egregious to set the qualifying issue in the Reading HDO.” *MO&O* at ¶14. This conclusion was based on finding (1) that the Commission’s holding in the *By Direction Letter* was to deny a request by Micheal Parker’s company, Two If By Sea Broadcasting Corporation (“TIBS”), to acquire without a hearing the license of WHCT-TV, Hartford, from a trustee in bankruptcy, because “there were issues in addition to but unrelated to Parker” *MO&O* at ¶7;

and (2) that there was “no statement or inference in . . . the By Direction Letter that there would be or should be a hearing on those serious questions at the next available opportunity.” *MO&O* at ¶13.

7. The Presiding Officer’s conclusion is supported by a relevant provision in the *By Direction Letter*, that Adams disregards, wherein the Commission concluded, “[i]n this instance, we believe that the numerous allegations against the parties involved in this assignment raise substantial and material questions of fact which cannot be resolved in acting on this assignment without a hearing.” *By Direction Letter*, 12 FCC Rcd at 2257 (emphasis added).

8. Thus, to the extent that the Commission issued any mandate in the *By Direction Letter*, that mandate only went so far as to require a hearing to resolve issues raised against both parties in the Hartford assignment application. Under applicable policy and precedent, the Commission could have required that there would be or should be a hearing on the qualifications of Mr. Parker and/or entities owned by him at the next available opportunity. *See, e.g., Character Policy Statement*, 102 FCC 2d 1179, 1223-25 at ¶¶92-94 (the Commission makes a case-by-case determination of whether an existing licensee, designated for hearing on character issues with respect to one license, may buy or sell other licenses, or have other authorizations renewed). However, the Commission did not mandate, as Adams alleged, nor, based on the language of the *By Direction Letter* and subsequent Commission action, can it reasonably be inferred, that applications in

which Micheal Parker is a principal may not be granted until his previously adjudicated misconduct has been considered.

9. The Presiding Officer's findings are based on reasonable inferences drawn from uncontroverted facts contained in Commission documents. Adams' challenge is to the proper inferences to be drawn from those facts. The "inferences to be drawn from facts already known and the legal conclusions to be derived from those facts" may be made by the Presiding Officer without an evidentiary hearing. *See Lakewood Broadcasting Service, Inc. v. FCC*, 478 F.2d 919, 924 (D.C.Cir. 1973), citing *Anti-Defamation League of B'nai B'rith v. FCC*, 403 F.wd 169, 171 (D.C. Cir. 1968). Therefore, Adams' claim that the Presiding Officer relied on "unsupported speculation" to justify his conclusion is unavailing.

10. Adams next claims that the Presiding Officer drew the wrong conclusion from the absence in the *HDO* of any discussion concerning Parker's previously adjudicated misconduct. *Request* at ¶5. Adams contends that nothing in the *HDO* or the Bureau's Comments in response to Adams' *Motion* supports the Presiding Officer's conclusion.

11. In the *MO&O*, the Presiding Officer concluded that in light of the Bureau's knowledge in 1997 of the serious findings that had been made against Micheal Parker, "the absence of any discussion in the Reading designation order would suggest that the Bureau specifically decided not to set the issues for formal adjudication." *MO&O* at ¶14. Specifically, the Presiding Officer found that Bureau's letter dated May 22, 1997, authorizing the assignment of the Norwell



license to Micheal Parker, and the adverse findings in *Religious Broadcasting Network* and *Mt. Baker* provide evidence that the adverse findings against Micheal Parker were known to the Bureau before the Bureau issued the *HDO*. *MO&O* at ¶13.

12. This finding is supported, in part, by the fact that Reading filed, on March 11, 1997, in reference to Reading's renewal application, a copy of the *By Direction Letter*. See *Reading's Opposition to Motion to Enlarge Issues* at ¶10. Because the *By Direction Letter* was part of Reading's renewal application file, it is uncontroverted that the Bureau was aware of the "serious questions" raised against Micheal Parker when it set the issues for Reading's renewal hearing.

13. Moreover, contrary to Adams' claim, as the Presiding Officer observed, language in the *HDO* fully supports the conclusion that the Bureau considered the basic qualifications of both applicants and determined that "[both of] the applicants appear qualified to construct and/or operate as proposed." *MO&O* at ¶14. Additionally, there was no suggestion in the *HDO* that the Presiding Officer "should or might consider adding issues relating to those 'serious questions.'" *MO&O* at ¶14. Even though the Bureau, in its Comments, did not explicitly explain why it did not set in the *HDO*, the adverse findings against Micheal Parker for formal adjudication, it is uncontroverted that the Bureau nevertheless concluded that "Adams' allegations clearly do not raise a material question of fact." *Bureau Comments* at ¶5.

14. Adams also argues that the Presiding Officer's reliance on the lack of discussion in the *HDO* regarding Parker's adjudicated misconduct for the conclusion that the Bureau specifically decided not to set the issues for formal adjudication means that the Bureau, *sub silentio*, chose to ignore the mandate in the *By Direction Letter*, and therefore, presents a new or novel issue. *Request* at ¶7. However, as explained above, the *By Direction Letter* lacked any mandate. Further, by stating that both applicants appear qualified to construct and/or operate as proposed, the Bureau was not acting *sub silentio*. Adams has failed to show that a novel issue of law or policy has been presented.

15. Finally, Adams claims that because the Bureau's Norwell letter involved an effort by Micheal Parker to sell rather than renew a license, the Presiding Officer's reliance on that letter was wrong. *Request* at ¶6. In the *MO&O*, the Presiding Officer, in accord with applicable precedent, found that because the Bureau in the Norwell letter determined that misconduct alleged in the *By Direction Letter* did not appear to involve the day-to-day operation of the Norwell station, and thus did not set an issue there, then a reasonable inference could be drawn that the Bureau, in not setting a qualifying issue in the Reading *HDO*, similarly determined that the same misconduct did not involve the day-to-day operation of WTVE. *MO&O* at ¶14. The Presiding Officer cited *Straus Communications, Inc.*<sup>2</sup> and the *Character Policy Statement*<sup>3</sup> to demonstrate that his

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<sup>2</sup> *Straus Communications, Inc.*, 64 RR 2d 556-557 (1987).

inference was consistent with Commission policy and precedent. Additionally, the Presiding Officer provided the alternative inference that the Bureau, in not setting a qualifying issue in the Reading *HDO*, considered the misconduct “to be now blocked by the ten year limitation.” *Id.*

16. Adams has failed to show that either inference is unreasonable. Moreover, apart from the Presiding Officer’s authority to draw reasonable inferences from uncontroverted facts, the Presiding Officer also relied, in significant part, on the Norwell letter as evidence to show that both the Commission and the Bureau were aware of the adverse findings against Micheal Parker when setting the issues for Reading’s renewal hearing. *MO&O* at ¶¶9&13.

17. As explained above, in the *By Direction Letter*, the Commission only held that the serious questions raised against Micheal Parker must be resolved in a hearing before acting on the Hartford application. In the Norwell letter, the Bureau held that “the misconduct alleged in the Hartford proceeding does not appear to have involved the day-to-day operation of the Norwell station” and “neither the HDO nor the Commission’s By Direction Letter limited the transferability of any stations commonly held by Parker.” *See MO&O* at ¶9. Clearly, by following by Norwell holding, the Presiding Officer did not address a new or novel question of law or policy.

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<sup>3</sup> *Character Policy Statement*, 102 FCC 2d 1179, 1223-24 (“If the Commission has not as an initial matter found that the allegations under consideration involve conduct likely to impact the future operations of other stations, there generally appears to be no reason to condition or defer such transactions.”)

18. A review of Adams' arguments reveals that what Adams is really challenging is the proper inferences which the Presiding Officer may draw from the facts presented. Adams, in its *Motion*, did not submit affidavits or any other direct evidence in support of its allegations. Rather, Adams relied on Commission documents. All of Adams' challenges here are based on the inferences drawn from the Commission documents. It is well-settled that the inferences to be drawn from facts already known and the legal conclusions to be derived from those facts may be made by the Presiding Officer without an evidentiary hearing. See *California Public Broadcasting Forum*, 752 F.2d 670, 674 (D.C. Cir. 1985); *Lakewood Broadcasting Service, Inc. v. FCC*, 478 F.2d 919 (D.C. Cir. 1973); *Anti-Defamation League of B'nai B'rith v. FCC*, 403 F.2d 169, 171 (D.C. Cir. 1968), *cert denied*, 394 U.S. 930 (1969), *cited with approval in Columbus Broadcasting Coalition v. FCC*, 505 F.2d 320 (D.C. Cir. 1974); *Stone v. FCC*, 466 F.2d 316, 323 (D.C. Cir. 1982). A dispute over the proper inferences to be drawn from agreed-upon facts does not raise controverted factual issues that are substantial and material so as to require a hearing, and it certainly does not present a novel issue of law or policy.

19. It appears that Adams and other entities represented by the same counsel are determined to prevent any company in which Micheal Parker has an interest from holding a broadcast license. However, as the Commission stated in the *Character Policy Statement*, "[t]he purpose of the character qualifications of the Commission's licensing process is not, of course, to eliminate licensees from further activity in broadcasting, but, as we have stated, to assure that those granted a

license will be truthful in their dealing with the Commission and reliable operators of their stations.” *Character Policy Statement*, 102 FCC 2d 1179, 1227 at ¶103; see also *Richard Richards*, 10 FCC Rcd 3950, 3955 (1995) (the purpose behind the Character Policy Statement is not to pass moral judgment on applicants, but to determine if the public interest will be served by grant of the specific application before us). Adams, in its *Motion*, utterly failed to make any showing regarding how the serious questions raised in the Hartford application would affect or had affected the day-to-day operations of WTVE.

II. The Adverse Findings Adams Relies On Are Too Remote For Consideration With Reading’s Renewal Application.

20. Adams makes the unsupportable claim that the Commission’s ten-year time limitation on adding character issues is not applicable to this proceeding. *Request* at ¶9. First, Adams argues that because the Commission determined in the *By Direction Letter* that “serious questions” remain regarding Micheal Parker, this somehow demonstrates that the ten-year limitation is not applicable here. *Request* at ¶9. However, Adams ignores the fact that at the time the Hartford assignment application was considered in *Two If By Sea Broadcasting*, the adverse findings against Micheal Parker were less than ten years old. Therefore, it would have been irrelevant, at that time, for the Commission to discuss its ten-year limitation for adding character issues.

21. Second, Adams argues that the Commission’s decision in *RKO General, Inc.*, 5 FCC Rcd 642 (1990), stands for the proposition that adjudicated adverse findings against a party apparently remain in effect in perpetuity, notwithstanding

the Commission's ten-year limitation on adding character issues, and therefore, only can be eliminated with an affirmative showing of 'good character.'" *Request* at ¶11.

22. Adams has mischaracterized the Commission's holding in *RKO General* as it applies to this case. In *RKO General*, two of the parties who had been disqualified in the Initial Decision of the same proceeding sought a ruling that the misconduct allegedly committed in that proceeding would not bar them from acquiring other stations. Obviously, the misconduct cited in that decision would not be barred by the ten-year limitation, because ten years had not passed since the misconduct occurred. Even Adams acknowledges that the misconduct occurred seven years earlier. *Request* at ¶11. Hence, under the facts presented in *RKO General*, it would have been pointless for the Commission to discuss its ten-year limitation for adding character issues.

23. As the Presiding Officer noted, "the Commission applies a time limitation on adding character issues based on ten-year old information that is within the Commission's control and that should have been discovered, even where the alleged misconduct indicates a 'flagrant disregard of the Commission's regulations and policies.'" *MO&O* at ¶12 citing *Character Policy Statement*.<sup>4</sup> In no

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<sup>4</sup> With regard to the ten-year limitation for adding character issues, the *Character Policy Statement* states, in relevant part:

As to the time period relevant to character inquiries, we find that, as a general matter conduct which has occurred and was or should have been discovered by the Commission, due to information within its control, prior

way did the Presiding Officer's application of the Commission's ten-year policy involve a new or novel question of law or policy.

III. Contrary to Adams' Assertion, the Presiding Officer Did Not Ignore The Amendment To An Application To Acquire Station KCBI.

24. With regard to the second issue, Adams first asserts that the Presiding Officer committed reversible error in failing to refer to Micheal Parker's amendment to an application to acquire international broadcast station KCBI. *Request* at ¶12. Adams disregards the Presiding Officer's discussion of that application and conclusion that the application did, in fact, contained "abbreviated descriptive language" regarding the status of seven consent assignment requests. *See MO&O* at n.6.

25. As Reading explained in its *Opposition* to Adams *Motion*, even though a real party-in-interest issue was added by the ALJ in the course of the *Religious Broadcasting* decision, at the point of final disposition, that issue had been dealt with and there were no unresolved character issues pending. *See Reading's Opposition to Adams' Motion to Enlarge Issues* at ¶58. Moreover, as the Presiding Officer noted in footnote 6, and Adams submitted as Attachment C to its *Motion*, notwithstanding Micheal Parker's amendment, the application for station KCBI nevertheless disclosed that Adams was involved in the *Religious Broadcasting*

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to the current license term should not be considered, and that, even as to consideration of past conduct indicating "a flagrant disregard of the Commission's regulations and policies," a ten year limitation should apply.

*Character Policy Statement*, 102 FCC 2d 1179, 1229 at ¶105.

*Network* and *Mt. Baker* proceedings and disclosed the adverse rulings in those cases. *MO&O* at n.6. As with the other arguments advanced by Adams, Adams utterly fails to meet the standard set in Section 1.301(b) of the Commission's Rules for certifying an appeal to the Commission.

IV. Even Though The Litigated Adverse Findings Against Micheal Parker Are Retained For Possible Future Use, The Commission's Ten-Year Limitation For Adding Character Issues Renders Those Finding Irrelevant In This Proceeding.

26. Finally, Adams makes the unsupported claim that the Presiding Officer's determination that, as a result of settlement, all of the adverse conclusions reached with respect to Micheal Parker and the dismissed applicant in *Religious Broadcasting* "are rendered moot" is inconsistent with Commission precedent. *Request* at ¶13.

27. Adams misconstrues the import of the Presiding Officer's conclusion. First, there is no dispute that there were adverse conclusions against Micheal Parker in *Religious Broadcasting Network*, and even Adams appears to concede that those conclusions pertained to the applicant's comparative qualifications, not its basic qualifications. Further, there is no dispute that there were unlitigated adverse conclusions against *Mt. Baker Broadcasting* in the *Mt. Baker* decision. What is of significance for the instant renewal proceeding is that more than ten years have passed since those decisions were issued.

28. As the Presiding Officer correctly concluded, under the *Character Policy Statement*, because the adverse conclusions against Micheal Parker are more than ten years old, they are no longer deemed relevant or reliable for determining



the basic qualifications of Reading Broadcasting, Inc. in this proceeding. *MO&O* at ¶19. The *Crystal Communications*<sup>5</sup> decision, upon which Adams relies, does not overturn the Commission's ten-year limitation for adding character issues. Adams has not, and most importantly, cannot show that the Commission's ten-year limitation for adding character issues is inapplicable to this proceeding or provides a basis for certifying an appeal to the Commission.

V. The Standard For Showing Misrepresentation/Lack Of Candor Is Intent To Deceive, Not Insufficiency.

29. Adams also argues that the Presiding Officer discounted the effect of Micheal Parker's failure to include in exhibits to applications official citations to the *Mt. Baker* and *Religious Broadcasting* decisions. *Request* at ¶16. Additionally, Adams cites the Bureau's Comments, wherein the Bureau stated that Parker's disclosure was insufficient.

30. However, the Commission's standard for disqualifying applicants for misrepresentation and/or lack of candor is not insufficiency of information. As the Presiding Officer explained, "[t]he Commission will not make adverse findings on misrepresentation or candor simply because there is a failure to provide sufficient information. There must be an accompanying intent to deceive." *MO&O* at ¶21. Adams has failed to show any intent to deceive, nor has Adams shown that this issue involves a novel question of law or policy.

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<sup>5</sup> *Crystal Communications Inc.*, 12 FCC Rcd 2149 (1997).

31. Finally, Adams attempts to argue that the Presiding Officer in citing to the *Joseph Bahr*<sup>6</sup> case, has used the wrong standard for determining whether to add a misrepresentation and/or lack of candor issue. Instead, Adams claims that the Presiding Officer should have relied on *Joseph Bahr*, 7 FCC Rcd 2147 (Rev. Bd. 1992). However, the relevant facts and law in that case is inapposite to the instant proceeding. First, in that case, the moving party supported its allegations with affidavits by parties with personal knowledge sufficient to demonstrate the existence of substantial and material questions of fact. Additionally, the controlling legal standard in that case concerned the addition of a late-filed motion to enlarge.

32. In order to add a character issue, the Presiding Officer must find, pursuant to Section 1.229 of the Commission's Rules, that with respect to each issue, Adams has set forth specific allegations of fact, supported, where necessary, by affidavits from persons with personal knowledge, demonstrating that substantial and material questions of fact exist as to Reading's basic qualifications to be a Commission licensee. As the Presiding Officer correctly concluded, "the Commission will not permit issues to be added which are based on speculation." *MO&O* at ¶20, citing *Folkways Broadcasting Co., Inc.*, 33 FCC 2d 806, 811 (Rev. Bd. 1972); *West Central Ohio Broadcasters, Inc.*, 1 FCC 2d 1178 (Rev. Bd. 1965). Further, as the Presiding Officer explained, "substantial evidence of an intent to deceive is the *sine qua non* of a misrepresentation or lack of candor finding." *MO&O* at ¶17. Adams' allegations rely solely on speculation that there may have

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<sup>6</sup> *Joseph Bahr*, 10 FCC Rcd 32 (Rev. Bd. 1994).

been intent to deceive. However, as the Presiding Officer concluded, based on the facts presented, there was “no reasonable ability for Parker or Reading to deceive the Bureau.” *MO&O* at ¶21.

VI. Petitions Requesting Reconsideration Of Non-Final Interlocutory Rulings Cannot Be Entertained.

33. Adams has failed to show that its appeal presents both a new or novel question of law or policy and that there is an error in the *MO&O* that would necessitate a remand should review be postponed pending the filing of exceptions. Rather, as is evident from the final sentence of its *Request*, Adams is really asking the Presiding Officer to reconsider his decision. Thus, although Adams has styled its document “Request for Permission to File Appeal,” the document is, in essence, a petition for reconsideration of the Presiding Officer’s *MO&O*. *Request* at ¶19. Accordingly, Adams’ *Request* should be dismissed. *See* 47 C.F.R. § 1.106(a)(1) (petitions for reconsideration of non-final interlocutory actions will not be entertained); 47 C.F.R. § 1.291(c)(3) (petitions requesting reconsideration of an interlocutory ruling made by the presiding officer will not be entertained); *see also Henry R. Malloy, Jr.*, 6 FCC Rcd 6497 (Rev. Bd. 1991); *Roxanne Givens*, 5 FCC Rcd 7010 (Rev. Bd. 1990).

34. For the foregoing reasons, the Presiding Officer should deny Adams' leave to appeal.

Respectfully submitted,  
READING BROADCASTING, INC.

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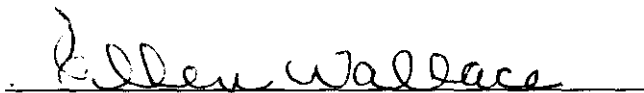
## CERTIFICATE OF SERVICE

I, Ellen Wallace, a secretary in the law firm of Holland & Knight, LLP, do hereby certify that on September 27, 1999, a copy of the foregoing OPPOSITION TO ADAMS' REQUEST FOR PERMISSION TO FILE APPEAL was delivered by hand to the following:

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